
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACOB ORTELL KINGSTON, et al.,

Defendants.

Case No. 2:21-CR-140-JNP

ORDER AUTHORIZING
INTERLOCUTORY SALE

Judge Jill N. Parrish

Magistrate Judge Dustin B. Pead

Before the Court is the United States’ motion for the interlocutory sale of property described in Exh. A (hereinafter referred to “the \$64 Million Biodiesel Plant”).

Pursuant to Rule G(7)(b) of the Federal Rules of Civil Procedure, as incorporated by Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure, the Court has the authority to order the interlocutory sale of property subject to forfeiture if the Court finds the property is perishable or at risk of deterioration; the expense of keeping the property is excessive or is disproportionate to its fair market value; or the Court “finds other good cause.” Rule G(7)(b)(i). The Court also has authority to enter an interlocutory sale order under 21 U.S.C. § 853(e), which authorizes the court to “take any . . . action to preserve the availability of property” subject to forfeiture.

The Court finds good cause for the issuance of this interlocutory sale order based on the following facts demonstrated by the United States: The outstanding property taxes of \$2,466,697.03 and the Purchase Proposal from Lean Manufacturing Design Consultants (“Lean Manufacturing”), which represents a viable option to preserve the value of the \$64 Million Biodiesel Plant.

Based on the following facts demonstrated by the United States: Lean Manufacturing has offered \$4 million to purchase the biodiesel plant, pay the outstanding real and personal property taxes of \$2,466,697.03, invest \$14.3 million in the biodiesel plant to make it operational.

In addition, as an operational plant, Lean Manufacturing projects it will employ forty-six full-time employees, twelve managers and thirty-four employees to operate the plant. It also anticipates the need for thirty full-time construction positions and eleven full-time design positions for six months.

The purchase of the \$64 Million Biodiesel Plant will also be subject to a public auction with the opportunity to obtain a better offer than the offer of Lean Manufacturing.

Accordingly, it is HEREBY ORDERED as follows:

1. The Motion for Interlocutory Sale is granted and the \$64 Million Biodiesel Plant may be sold pursuant to the below provisions:

a. The Treasury Executive Office for Asset Forfeiture (“TEOAF”), including any contractor retained by TEOAF, may auction the \$64 Million Biodiesel Plant according to its policies, practices, and procedures. The TEOAF has sole discretion to decide the logistics of the auction, including but not limited to, the timing of such auctions; and the auction process itself.

b. TEOAF may reject in its sole discretion any offer to purchase the \$64 Million Biodiesel Plant where it determines that such offer is made by a person involved in the criminal activity alleged as the basis for forfeiture in the indictment or a person acting on behalf of such a person.

2. The proceeds from the sale shall be disbursed in the following priority and in the following order:

a. First, all costs of sale, including but not limited to closing costs, title insurance, recording fees, escrow fees, and sales commissions associated with the sale of the \$64 Million Biodiesel paid at the time of closing;

b. Second, any unpaid real property taxes, fees, interest, and penalties accruing on the property due and owing to any municipal, county, or state authority.

c. Third, all costs not previously paid that were incurred by the United States, its agencies, or contractors in connection with the marketing of the \$64 Million Biodiesel Plant; and

d. Finally, all remaining proceeds shall be held by TEOAF in a seized asset account pending the entry of this court's forfeiture order and directions in that order how TEOAF may dispose of the proceeds.

3. Under Rule G(7)(b)(iv), the \$64 Million Biodiesel Plant sale proceeds will be a substitute *res* subject to forfeiture in place of the \$64 Million Biodiesel Plant that will be sold. TEOAF will hold the net proceeds in an interest-bearing account pending further order of this court.

Dated this ____ day of April, 2022.

BY THE COURT

Jill N. Parrish
United States District Judge

Exhibit A

The property is described as follows:

The physical plant once known as Washakie Renewable Energy, LLC with an address of 8100 West 24000 North, Portage, Box Elder County, Utah and a Parcel Number of 08-046-0002, and all the equipment installed therein, and affixed thereto, including the Biodiesel Production Plant, the Crush Plant and Warehouse, the Liquid Storage Tank Farm(s), the Rail Line, and the Electric Substation.

Certificate of Service

I certify that on the 21st day of March 2022, I caused a copy of the foregoing to be emailed to counsel below and mailed to ICPE Construction Management Services, LLC:

Box Elder County Assessor's Office is represented by counsel, Steven Hadfield, Box Elder County Attorney, at 81 North Main Street, Suite 102, Brigham City, Utah 84302, shadfield@boxeldercounty.org.

NWR Limited Partnership who is represented by counsel, Jim Bradshaw, Brown, Bradshaw & Moffat, 422 North 300 West, Salt Lake City, Utah 84103, jim@brownbradshae.com.

Lev Dermen, a/k/a Levon Termendzhyan, who is represented by counsel, Mark J. Geragos, Esq., Geragos & Geragos APC, 644 S Figueroa St., Los Angeles, CA 90017, (213) 625-3900, mark@geragos.com.

ICPE Construction Management Services, LLC at 3212 South State Street, SLC, Utah 84115.

Lifetree Trading PTE, Ltd who is represented by counsel, Adam Affleck, Richards Brandt, 111 East Broadway, Suite 400, SLC, Utah 84111, adam-affleck@rbmn.com.

/s/ Cy H. Castle

CY H. CASTLE

Assistant United States Attorney